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SHORTER ARTICLES, COMMENTS AND NOTES

THE EAST TIMOR DISPUTE

BETWEEN sixty and one hundred thousand people have perished since Indonesia's 1975 intervention in the remote territory of East Timor.[1] A guerilla war is still being waged against this attempt to integrate the territory into the Republic of Indonesia.[2] Yet many people do not know where the territory is, yet alone the extent of the conflict. The dispute raises many issues of international law. The aim of this note is to concentrate upon the effect of the dispute on the status and application of the principle of self-determination.

FACTUAL BACKGROUND [3]

East Timor had been a Portugese colony since the sixteenth century. After a long period of dispute, an agreement between Holland and Portugal was signed in 1893 which formally divided the island, the west being under the sovereignty of Holland and the east under Portugal. The Island is situated 600 kilometres off the north-west coast of Australia. East Timor is 14,925 square kilometres in area and has a population of 650,000. The climate is tropical and the main crop is coffee. The western section of the island became part of Indonesia in 1947.

Although there appears to have been an unsuccessful uprising against the Portugese administration in 1959, the first real moves towards self-determination came after the 1974 revolution in Portugal. The new Portugese Government amended the constitution to provide for a policy of decolonisation for the Portugese territories and recognised their peoples' right to self-determination.

A number of political parties then became active in East Timor.[4]

[1] Mr. José Ramos-Horta, the foreign affairs and United Nations representative of FRETILIN claimed that 60,000 people had died: *U.N. Chronicle*, May 1976, pp. 8–9, reporting the proceedings of the Security Council between April 12 and 22, 1976. *Le Monde*, Jan. 27, 1976. An Australian, Mr. James Dunn, made a report after interviewing refugees from the conflict which stated that 100,000 people have perished. *The Times*, Feb. 1, 1976. This report was presented to the United States Congress, House International Relations Sub-Committee: *New York Times*, Mar. 13, 1976. A representative of the USA Secretary of State Department claimed that the reports were exaggerated and that the toll was 10,000 dead *Herald Tribune*, Mar. 20, 1976.

[2] The situation remains unclear because of poor communications with the outside world, but the latest reports of wireless messages sent by FRETILIN forces indicate that fighting is continuing: *The Times*, July 4, 1977; Hsinhua News Agency, June 1977. Indonesia claims that FRETILIN forces have been defeated.

[3] This has been taken from *Report of the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*. UN Doc. A/10023/Add.1, Chap. VIII. Report by the Special Representative of the Secretary-General appointed under Security Council resolution 384 (1975), addressed to the Secretary-General on Feb. 29, 1976: UN Doc. S/12011. Second Report by the Special Representative of the Secretary General appointed under Security Council resolution 384 (1975) addressed to the Secretary General on June 22, 1976: UN Doc. S/12106. Various press reports from *The Times*, *The Guardian*, *The Observer*, *The New York Times*, *The Daily Telegraph*, *The New Strait Times*, *Le Monde*, *The Herald Tribune*, and the Hsinhua News Agency, from 1974 to 1977.

[4] Reports concerning the dispute mention various parties with differing names, those mentioned are the major ones.

Three main parties emerged; the Frente Revolucionária Timor Leste (FRETILIN) which had been formed in 1970 as an underground movement of left-wing persuasion, advocating full independence for the territory; the União Democratica Timorense (UDT), founded on May 11, 1974, which originally advocated a form of federation with Portugal gradually leading to independence; and Associacao Popular Democratica de Timor (APODETI), formed on May 27, 1974, and advocating the integration of East Timor with Indonesia. Several other smaller parties were also formed, the most important being KOTA, Kilibur Oan Timor Aswan, arguing for the preservation of the traditional tribal system with the luivais or local chiefs remaining leaders of the people, and finally TRABALHISTA, the Labour Party, advocating independence within a form of Commonwealth system.

FRETILIN and UDT initially formed a coalition against APODETI's proposals for integration with Indonesia. During 1974 and early 1975 many of the leaders of these parties visited Indonesia which officially expressed no desire to annexe the territory. Portugal organised a meeting in June 1975 between the parties. However FRETILIN refused to attend, and at this time the coalition between UDT and FRETILIN began to break down. In June 1975 Portugal passed law 7/75 providing for a transitional government to prepare for elections in October 1976. Portugese sovereignty was to be terminated on the third Sunday of October 1978. Such a peaceful transition was not to be.

In the early morning of August 11, 1975, UDT staged a coup in the capital of Dili. The party claimed that it was pre-empting a planned coup by FRETILIN for August 15. FRETILIN then attempted a counter-coup and civil war broke out in the territory. FRETILIN appears to have defeated the other parties in the conflict. It claims that from August to November 1975 it controlled Dili and most of the countryside. The Portugese administration was incapable of preventing the conflict and was forced to retire to the island of Atauro. On November 28, 1975, FRETILIN made a unilateral declaration of independence and established the Government of the Democratic Republic of East Timor. The other parties had previously formed a coalition which denounced FRETILIN's declaration and instead, declared the independence and integration of the territory with Indonesia on November 30, 1975. On December 7, 1975 Indonesian troops entered East Timor, although FRETILIN claims infiltration into the territory began in September 1975. The Indonesians captured Dili but encountered strong guerilla resistance from the FRETILIN forces. It appears that fighting is still continuing in the territory. The necessary steps towards integration were begun following Indonesia's intervention.[5] On December 17, 1975, the coalition established the Provisional Government of the Territory of East Timor.

On May 31, 1976, a People's Assembly of East Timor was constituted, and formally requested Indonesia to accept its request for integration. In May 1976 a delegation of the Assembly presented

[5] See telegram transmitted to the Secretary-General on Aug. 6, 1976, by Indonesia: UN Doc. S/12170.

the President of Indonesia with a petition for integration. Following a visit of an Indonesian delegation to East Timor, the Indonesian Cabinet accepted the request, and a formal Statute of Integration was passed by the Indonesian Parliament on July 17, 1976. FRETILIN denounced the Assembly as unrepresentative and the process of integration as a sham and claimed to represent the majority of the people.[6]

THE ACTION OF THE UNITED NATIONS

The dispute was brought before the General Assembly[7] and the Security Council.[8] It was also debated before the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,[9] and the Fourth Committee.[10]

On December 12, 1975, the General Assembly passed Resolution 3485 (XXX).[11] The Resolution called upon all States to respect the "inalienable right of the people of Portugese Timor to self-determination" and urged the Portugese Government and the parties to come to a peaceful solution. It strongly deplored the military intervention of Indonesia and called for the withdrawal of Indonesian troops. Finally it called for a fact-finding mission to be sent to the territory and drew the attention of the Security Council to the situation.

On December 12, 1975, the Security Council unanimously passed Resolution 384.[12] The Resolution deplored Indonesia's intervention, regretted that Portugal had not discharged fully its responsibilities as administering power and called upon all States to respect the territorial integrity of East Timor and for Indonesia to withdraw its forces. It also requested the Secretary-General to send a special representative to report on the situation. The Special Representative's report was inconclusive. He was prevented from travelling freely through the area because of the fighting. Consequently the majority of the places he viewed were controlled by the Indonesians. He advised that there was a need for "consultation" and "that the people of East Timor should be consulted on the future status of the Territory."[13] The Security Council then met to consider the report and on April 22, 1976, it adopted Resolution 389.[14] The Resolution again "called upon" the Government of Indonesia to withdraw without delay all its forces from the Territory and requested the Special Representative to continue his assignment.

Following the report of the Fourth Committee the General

[6] Letter dated July 8, 1976 from Mr. José Ramos Horta addressed to the Secretary-General: UN Doc. S/12133.

[7] See Report to the Secretary-General on the Work of the Organisation June 16, 1975–June 15, 1976, pp. 35–36. 31 GAOR Supp. No. 1, 35–36; UN Doc. A/31/1.

[8] Report of the Security Council of June 16, 1975–June 15, 1976. 31 GAOR Supp. No. 2 Ch. 4; UN Doc. A/31/2.

[9] UN Doc. A/10023/Add. 1 Ch. VIII; UN Doc. A/31/23 Add. 6.

[10] UN Doc. A/10426 and Corr. 1; UN Doc. A/31/362.

[11] UN Doc. A/RES/3485 (XXX). The vote was: 72 in favour; 10 against; 47 abstentions.

[12] *Supra* n. 8.

[13] UN Doc. S/12011 1, 12.

[14] *Supra* n. 8. Japan and USA abstained.

Assembly adopted Resolution 31/51 of December 17, 1976.[15] The main parts of the resolution strongly deplored the persistent refusal of Indonesia to comply with the previous General Assembly and Security Council resolutions and again called upon Indonesia to withdraw. It further rejected the claim that East Timor had been integrated into Indonesia, inasmuch as the people of the Territory had not been able to exercise freely their right to self-determination and independence. Finally it recommended that the Security Council should take all effective steps to ensure implementation of Resolutions 384 and 389.

Meanwhile the Special Representative had made a further report which again was inconclusive. His final conclusion was that it was not possible to assess accurately the prevailing situation in East Timor, particularly as regards the implementation of Security Council Resolutions 384 and 389.[16] Both the Security Council and General Assembly remain seised of the matter.

THE ARGUMENTS FOR INDONESIA

The main theme of Indonesia's argument is that the people of East Timor have exercised their right of self-determination.[17] It claims that its initial intervention of December 7, 1975 was not with the intention of annexing the territory. The majority of the people, in the form of the parties in opposition to FRETILIN, invited Indonesian intervention. It was necessary for Indonesia to prevent the chaos and bloodshed created by FRETILIN and for it to create a peaceful situation for the people to exercise freely their right of self-determination.

Indonesia claims that it successfully created such a situation, and the actions of the People's Assembly of May 31, 1976 amounted to the exercise of the principle of self-determination. One of the alternatives of Resolution 1541 (XV) [18] is a free choice by a people to integrate with an existing independent State. This is what the people of East Timor had determined for themselves.

A number of other issues arose from the arguments of Indonesia and her allies at the United Nations. It was stated that integration with Indonesia was logical because of three factors (among a number of others): political stability, territorial integrity and unity, and the economic viability of the territory.

Indonesia claimed that a political vacuum had been left by the Portugese administration, in which chaos, bloodshed and political instability had arisen. Armed incursions had been made by FRETILIN into Indonesian territory. Therefore the national interests of Indonesia and the interest of the entire region of South-East Asia

[15] UN Doc. A/RES/31/53. The vote was: 68 in favour; 20 against; 49 abstentions.

[16] UN Doc. S/12106 1, 4.

[17] See Record of the meetings of the Security Council, Dec. 15–22, 1975 in *UN Chronicle*, Jan. 1976, 6, 8–9. Record of the meetings of the Security Council April 12–22, 1976, in *UN Chronicle*, May 1976. 8, 12–13. Record of the meetings of the UN Fourth Committee: UN Doc. A/C 4/31/SR 27, 6–7.

[18] G.A. Resolution 1541 (XV) of Dec. 15, 1960, Principle VI (C): UN Doc. A/RES/1541 (XV).

required Indonesian intervention.[19] Inherent in this argument is the idea that it is better to have a stable right-wing government in East Timor rather than the left-wing FRETILIN government.

Indonesia stressed the geographical, ethnic and historical ties between itself and East Timor.[20] The colonial powers had wrongly and artificially divided the island. A return to territorial integrity and unity appeared logical.

Indonesia, the representatives of the anti-FRETILIN coalition and their allies at the United Nations also stressed that the territory was not economically viable.[21] The territory was so small, so sparcely populated and lacking in industry and natural resources that it could not stand on its own two feet as an independent State in the international community. Integration was a better alternative.

THE PRINCIPLE OF SELF-DETERMINATION

Article 2 of the Declaration on the Granting of Independence to Colonial Countries and People's (Resolution 1514 (XV)), states:

> All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.[22]

There has been a continuing debate as to whether self-determination has become a principle of international law. Writers are divided on the question.[23] The International Court of Justice in the 1971 Namibia Advisory Opinion[24] and the 1975 Western Sahara Advisory Opinion[25] seems to support the argument that it has crystallised into a principle of international law. Judge Dillard in his separate opinion in the Western Sahara Opinion stated that the pronouncements of the court in the Namibia and Western Sahara Advisory Opinions "indicate, in my view, that a norm of international law has emerged applicable to the decolonisation of those non-self governing territories which are under the aegis of

[19] *UN Chronicle* Jan. 1976, 6, 9 and 13. See also the statement of the Malaysian representative, *ibid.* 10, and statement of the Phillipines' representative: *UN Chronicle* May 1976, 8. 13.

[20] *Ibid.* See also the statements of the representative of APODETI and KOTA, *ibid.* 11.

[21] *Ibid.* See also the statements of the representative of UDT, *ibid.* 11, and the statements of the representative of Saudi Arabia, *UN Chronicle* May 1976, 8, 40 and Mr. Rex Syddell, an Australian witness, *ibid.* 39.

[22] G.A. Resolution 1514 (XV) of Dec. 14, 1960; UN Doc. A/RES/1514 (XV).

[23] Among those arguing against its existence as a legal principle, see: L. Gross, "The Right of Self-Determination in International Law," in *New States in the Modern World*; R. Emerson, "Self-Determination" (1971) 65 *American Journal of International Law* 459; J. Engers, "From Sacred Trust to Self-Determination" (1977) XXIV *Netherlands International Law Review* 85. Among those arguing in favour see: Rosalyn Higgins, *The Development of International Law through the Political Organs of the United Nations* (1963) at pp. 101–102. Ingrid Delupis, *International Law and the Independent State* (1974) at pp. 13–18; S. Chowdhury, The Status and Norms of Self-Determination in Contemporary International Law (1977) XXIV *Netherlands International Law Review* 72.

[24] The Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970): [1971] 16 *I.C.J.* 31.

[25] [1975] 12 *I.C.J.* 31–32

the United Nations." [26] The parties in the Western Sahara Opinion did not dispute the legality of the principle, nor did the parties in the East Timor dispute. Portugal attempted to put the principle into practice and Indonesia claims to have complied with it. The problem is the manner in which self-determination is to be applied. The key factor in the application of the principle is the free and voluntary choice of the peoples' of the territory. This was strongly emphasised by the court in the Western Sahara Opinion, when it stated:

> The validity of the principle of self-determination defined as the need to pay regard to the freely expressed will of peoples, is not affected by the fact that in certain cases the General Assembly has dispensed with the requirement of consulting the inhabitants of a given territory. Those instances were based either on the consideration that a certain population did not constitute a "people" entitled to self-determination or on the conviction that a consultation was totally unnecessary, in view of special circumstances.[27]

The problem which some of Indonesia's arguments accentuate is whether political stability, territorial integrity and economic viability could be said to be special circumstances or factors which override the exercise of the free choice of the people. It may be that if this is the case, then self-determination really is not a legal principle but a political guideline. Independence is not the only result of this free choice. Resolution 1541 (XV) Principle VI states:

> A Non-Self Governing Territory can be said to have reached a full measure of self-government by:
> (a) emergence as a sovereign independent State;
> (b) free association with an independent State; or
> (c) integration with an independent State.[28]

However, Principle IX provides that integration should have come about in the following circumstances:

> (a) the integrating territory should have attained an advanced stage of self-government with free political institutions, so that its peoples would have the capacity to make a responsible choice through informed and democratic processes;
> (b) the integration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult sufferage. The United Nations could, when it deems it necessary, supervise the processes.[29]

The majority of State practice shows that decolonisation has come about through a free choice of the people.[30] There have been

[26] *Ibid.* 121.
[27] *Ibid.* 32.
[28] Principle VI, *supra* n. 18. See also Resolution 2625 (XXV) of Oct. 24, 1970.
[29] *Supra* n. 18.
[30] See T. Franck, "The Stealing of the Sahara" (1976) 70 *American Journal of International Law* 694, 699–701, where he lists nine plebiscites organised by the United Nations, and four other plebiscites or elections in which the United Nations has been involved.

a large number of plebiscites organised by the United Nations.[31] Many territories have chosen free association with existing States. The Northern Marianas chose to become part of the United States in 1954, the Cook Islands chose to associate with New Zealand in 1965 and the island of Mayotte recently chose to join France rather than become part of the newly formed Comoros Islands. The peoples of the territory of French Somaliland chose to become the independent State of Djibouti, despite claims for integration by Somalia and Ethiopia. The last two choices have come about in the face of arguments similar to those proposed by Indonesia. Claims that in certain circumstances the free choice of the people should become subordinate to other factors.

The most obvious State practice going against the application of free choice is the success of Morocco and Mauritania in dividing the territory of Western Sahara against the combined resolutions of the United Nations and the advisory opinion of the International Court of Justice.[32] The effect of this dispute together with that of East Timor on the principle of self-determination will now be examined.

EFFECT OF DISPUTE ON PRINCIPLE OF SELF-DETERMINATION

The dispute raises a number of issues. It must first be settled whether Indonesia is correct in its assertion that self-determination has been achieved through the free exercise of the will of the people. Should this not be so, what is the effect on the application of the principle? Does it mean that in certain circumstances other factors will override the free choice of the people? Do these factors justify unilateral armed intervention? If the answer to these questions is yes, can self-determination be said to be a legal principle or merely a variable political guide-line lacking in any binding content?

Indonesia entered East Timor at a time of civil strife. The administering power, Portugal, had lost control of the territory, and one party, FRETILIN, seemingly had gained the upper hand in the internal struggle. The UDT-APODETI coalition which supported integration then invited Indonesia to enter the territory. The claims that the Indonesian troops were "volunteers" does not warrant consideration.[33] Indonesia couched its intervention in terms of restoring peace, of creating a situation for self-determination to be exercised, of the humanitarian desire to alleviate the suffering of the people and to exercise its right of self-defence against armed FRETILIN incursions.[34] The aim was never to annex territory but to allow for the people to decide freely their future. Therefore is it in accord with the principle of self-determination for a State to intervene unilaterally to create a peaceful situation in order for

[31] *Ibid.*

[32] *Loc. cit. supra* n. 30, 719–720.

[33] *UN Chronicle*, Jan. 1976. 1, 9. Although the intervention of "volunteers" might raise questions of State responsibility, the troops were fully armed regulars and it is preferable to treat the intervention as an official government act. See statement of Representative of Guinea: *UN Chronicle*, May 1976, 8, 41.

[34] *Ibid.* 9–10.

the principle to be properly applied? Is it lawful for a State to intervene at the request of a party in a civil war?

Nowhere in the many UN resolutions and declarations on self-determination is there a provision justifying armed intervention. The Indonesian claim is greatly weakened by the fact that the party requesting its intervention happens to support integration with Indonesia. The Indonesian action raises the vexed and many sided problems of the unilateral use of force. Portugal charged Indonesia at the Security Council with aggression under Article 39 of the UN Charter.[35] Although calling upon Indonesia to withdraw, the Security Council did not go so far as to term the intervention an act of aggression.

Indonesia claims to have complied with the resolutions concerning self-determination and yet an examination of Resolution 2625 (XXV) shows that, as well as containing a definition of the principle of self-determination, it contains the definition of the principle of non-intervention. That principle is widely enough expressed to judge Indonesia's action as a breach of international law; it expressly condemns interference in civil strife in another State.[36] But despite the apparent illegality of Indonesia's initial intervention, was a peaceful situation created in which the people of East Timor have freely chosen integration? The weight of evidence is strongly against Indonesia.

It does not appear that Indonesia has complied with Principle IX of Resolution 1541 (XI). The descriptions of the poverty, illiteracy and backwardness of the people put forward, even by the parties supporting integration, show that the circumstances required for the people to choose freely integration were not present in the territory.[37] The territory had not "attained an advanced stage of self-government." There is too much doubt surrounding the establishment of the "People's Assembly." The United Nations Representative could not make a clear report on the situation. FRETILIN claims to receive majority support, and occupy large areas of the territory.[38] Its representatives strongly denounced the process of integration as a sham.[39] These doubts do not support a claim that integration was the result "of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status."[40]

If Indonesia is correct in its claim that a peaceful situation now exists, and is confident that a plebiscite organised by the United Nations would result in a vote for integration, why does it refuse to comply with the United Nations' resolutions to withdraw its troops? Calling the Indonesian forces "volunteers" does not dispose of the question.

If we come to the conclusion that there has not been a free expression of the will of East Timorese people, are there other

[35] *Ibid.* 8.

[36] G.A. Resolution 2625 (XXV) of Oct. 24, 1970.

[37] See statements of representatives of UDT, APODETI and KOTA *loc. cit. supra* n. 33, 11; see also evidence of Mr. Rex Syddell, *UN Chronicle*, May 1976, 8, 39.

[38] *UN Chronicle*, May 1976, 8, 9.

[39] *Supra* n. 6. See also statement by representative of FRETILIN before the Fourth Committee, UN Doc. A/C 4/31/SR.12 2, 6–7.

[40] *Supra* n. 29.

overriding factors? Are there "special circumstances" in which self-determination may be achieved without consulting the people? Should "political stability" amount to a special circumstance? Indonesia claimed that it "was concerned about peace and stability in East Timor, first of all in the interest of the local population, but also in Indonesia's national interest, and in the interest of the entire region of South-East Asia."[41] Indonesia "could not remain indifferent in the face of the prospect of chaos in East Timor developing into a second Angola."[42] Certainly it is preferable for the Western powers to have a stable right-wing Indonesian Government in East Timor rather than the unstable left-wing Government of the Democratic Republic of East Timor. The USA and Australia have not been prominent among the majority of States in denouncing Indonesia's action.[43]

One author has stated that the "higher interests" of peace and security had to prevail over "abstract theory" in East Timor.[44] When it comes to the practical application of the principle, political considerations prevail over the free choice of the people. If such an argument is accepted, self-determination is certainly nothing more than a political guide-line lacking in legality. An analogy can be drawn between self-determination and the principle of non-intervention. If the actions of Russia in intervening in Czechoslovakia, and the USA in Puerto Rico, are justifiable on the ground of political stability, then the principle of non-intervention becomes meaningless. So too with the principle of self-determination. If the free choice of the peoples can be subordinated to unilateral armed intervention in the name of creating "political stability," then the principle has no legal content at all.

Many former colonies are arguing that the principle of self-determination must be balanced with the principle of "territorial integrity." It appears that arguments based on this so called principle take two forms. The first is that propounded by Morocco and Mauritania in the Western Sahara Opinion.[45] They argued that Western Sahara was formerly under their sovereignty and that Spanish colonisation illegally separated the territory. Therefore a process of "retrocession" should take place, restoring territorial integrity. Because of strong historical ties the territory should be returned to its former sovereign State and this objective should override the choice of the peoples of the territory to follow a different course. Similar arguments have been put forward by Guatemala in regard to Belize and Argentina in regard to the Falkland Islands.[46]

The Western Sahara Opinion was concerned with historical ties

41 *UN Chronicle*, Jan. 1976, 6, 8.

42 *Ibid.* 9.

43 The USA abstained from voting on G.A. Resolution 3485 (XXX), voted against G.A. Resolution 31/53, voted in favour of Security Council Resolution 384 and abstained from Resolution 389. Australia voted in favour of G.A. Resolution 3485 (XXX), and abstained from voting on Resolution 31/53.

44 J. Engers, "From Sacred Trust to Self-Determination" (1977) XXIV *Netherlands International Law Review* 85, 88. Engers argues that political stability and economic non-viability overcame the free exercise of the people's will in East Timor. It appears that the people's will is "abstract theory."

45 [1975] I.C.J. 3, 29–30.

46 UN Doc. A.31/PV85 17–25.

establishing a legal title to the territory. To date Indonesia has not put forward its case in exactly the same form. However, Indonesia might argue that there was a former kingdom exercising sovereignty over the whole of the island of Timor and that it now stands in the boots of that kingdom. Even if such an argument could be mounted (and this is unlikely in the light of the constitution and nature of the Federation of Indonesia itself) it would not appear conclusive in overriding the free choice of the people. The court in the Western Sahara Opinion emphasised that claims based on historic title should not be paramount in the process of decolonisation.[47] The cumulative effect of recent international law showed that the free choice of the people was the decisive factor to be applied, and that past history should not dominate the present. As Judge Dillard said: "It is for the people to determine the destiny of the territory and not the territory the destiny of the people."[48] In any case the court did not find any legal ties between Western Sahara and Morocco or Mauritania.[49]

Indonesia and many of its supporters have advanced a broader version of the territorial integrity principle. Rather than basing an argument on historic title it argued instead that geographical, ethnical and cultural ties made it logical that the territory be integrated.[50] The peoples of East and West Timor came from the same race, spoke the same languages and had a similar form of culture. Only the greed of the former colonial powers had divided the island, keeping the peoples apart. The logical step was the integration of the two parts of the island. The representative of FRETILIN strongly refuted these arguments before the Security Council. He stated that there was great ethnic diversity in the Jusa Tenggara Archipelago which included Timor.[51] Timor had closer ties with Papua New Guinea rather than with Java.[52] The peoples of East and West Timor spoke different languages and hundreds of years of colonial separation had caused their societies to develop on different levels.[53] He went on to state that if Indonesia's arguments were pushed to their logical conclusion Papua New Guinea could claim West Irian, Spain could claim Portugal and Italy, the Vatican City.[54]

Such arguments based on historical, ethnic and geographical ties should never be allowed to override the free choice of the people. These arguments conflict with the paramountcy given to free choice by the court in the Western Sahara opinion and as such cannot be accepted in the name of logic.

A further argument put forward by Indonesia was that the territory was not economically viable enough to become an inde-

47 *Loc. cit. supra* n. 45, at 32.
48 *Ibid.* 122.
49 *Ibid.* 69.
50 *Supra* n. 20. See also statement of representative of India before the Fourth Committee: UN Doc. A/C4/31/SR 13 2, 11, and statement of representative of Bolivia: UN Doc. A/C 4/31/SR 27 4, 5.
51 *UN Chronicle*, May 1976, 8, 9.
52 *Ibid.*
53 *UN Chronicle*, Jan. 1976, 1, 10.
54 *Loc. cit. supra* n. 51, at 10.

pendent State.[55] Portugal had left the territory in a backward condition. The size of the territory was small, the population sparse and there were few natural resources. Such a territory could not accept the responsibilities of statehood in the international community. This argument raises the problem of micro-States. Lack of size has not prevented peoples choosing independence in the past. As was stated during the debate of the Fourth Committee, there are about thirty States members of the United Nations of the same size or smaller, and with the same or smaller populations than East Timor.[56] It is also reported that there may be deposits of oil under the coastal waters of East Timor.[57]

Such arguments echo those of former colonial powers refusing self-determination, on the grounds of the backward economic, social and cultural state of their colonies. Article 3 of Resolution 1514 (XV) was inserted to prevent colonial powers using such an argument.[58] It is now no justification for those former colonies to annex territories because they are not economically viable.

CONCLUSION

It appears that the weight of evidence does not support Indonesia's contention that self-determination has been achieved by the free choice of the people to integrate. The General Assembly and Security Council did not accept this argument, refusing to recognise the integration and calling on Indonesia to withdraw.

Therefore to what degree should the factors of territorial integrity, economic viability and political stability be taken into account in applying the principle of self-determination, should these amount to special circumstances requiring that consultation with the people is unnecessary? The answer is No. Should these principles be allowed to override the free choice of the people, then self-determination becomes a meaningless piece of political propaganda amenable to any self-serving State.

Whether it can be categorically stated that Indonesia's actions were in breach of the principle of self-determination depends on the approach to international law adopted. Those adopting a positivist and pessimistic approach would state that the cases of Western Sahara and East Timor are examples of State practice succeeding against repeated resolutions of the United Nations. Since such actions have gone unsanctioned, it cannot be said that self-determination through the free choice of a people has crystallised into a rule of international law. Again the high principled resolutions of the United Nations have not been followed in practice and therefore cannot be said to be law.

Adopting a more functionalist approach the actions of Indonesia are in breach of international law. There is a large amount of State practice where the people have chosen freely either indepen-

[55] *Supra* n. 21.

[56] Statement of representative of Democratic Kampuchea: UN Doc. A/C 4/31/SR.13 2, 7.

[58] Art. 3 of Resolution 1514 (XV) of Dec. 14, 1960 provides: "Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence."

dence, integration or free association. A great many of these cases were plebiscites organised by the United Nations. The cases of Western Sahara and East Timor are to be regarded as exceptions to the bulk of State practice. The aim of the many United Nations resolutions and declarations concerning the principle of self-determination was to ensure that non-self-governing peoples freely chose their political and social status. Even though Indonesia, Morocco and Mauritania have been successful in that they have not been sanctioned, their actions must be regarded as illegal in the light of the aims of the United Nations resolutions.

The latter course must be adopted. It must be clearly stated that Indonesia's actions breached the principle of self-determination and possibly other areas of international law. Otherwise a precedent will be set for Argentina, Guatemala and other former colonies to annex neighbouring non-self governing territories regardless of the wishes of their peoples. It may be that we are witnessing the last era of colonisation, the era of former colonies grasping what is not rightfully theirs.

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